

FEDERAL COMMUNICATIONS COMMISSION  
Enforcement Bureau  
Market Disputes Resolution Division  
445 12<sup>th</sup> St., SW  
Washington, DC 20554

July 8, 2019

Copies sent by E-mail

NOTICE OF COMPLAINT

BellSouth Telecommunications, LLC d/b/a )  
AT&T Florida, )  
 )  
Complainant, )  
 )  
 )  
v. )  
 )  
Florida Power and Light Company, )  
 )  
Defendant. )

Proceeding Number 19-187  
Bureau ID Number EB-19-MD-006

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Counsel for Defendant

Dear Counsel:

On July 1, 2019, BellSouth Telecommunications, LLC d/b/a AT&T (AT&T) filed with this Commission a complaint against Florida Power and Light Company (Florida Power) under section 224 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 224.<sup>1</sup> Florida Power should have a copy of the Complaint as served by hand by AT&T on July 1, 2019. See 47 CFR § 1.734(c). If that is not the case, Florida Power should immediately contact Commission counsel.

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<sup>1</sup> Pole Attachment Complaint, Proceeding No. 19-187, Bureau Id. No. EB-19-MD-006 (filed July 1, 2019) (Complaint).

Lia Royle and I are Commission counsel for this proceeding. My phone number is (202) 418-7273, and my e-mail address is [lisa.griffin@fcc.gov](mailto:lisa.griffin@fcc.gov). Lia's phone number is (202) 418-7391, and her e-mail address is [lia.royle@fcc.gov](mailto:lia.royle@fcc.gov).

This letter outlines the procedural rules relevant to this case and establishes a schedule for the proceeding. We will conduct this proceeding in accordance with the Commission's rules governing section 224 complaint proceedings, which are found at 47 CFR §§ 1.720-1.740 and 1.1401-1.1415.<sup>2</sup>

In reviewing the Complaint, we note that it contains no legal analysis relevant to AT&T's argument that a five-year statute of limitations applies to its claim. *See* 47 CFR § 1.722(e). In addition, AT&T did not file the correct formal complaint intake form.<sup>3</sup> *See* 47 CFR §§ 1.722(j). Accordingly, pursuant to our customary practice in such instances, we direct AT&T, by July 12, 2019, to serve on Florida Power legal counsel and file with this Commission an amended complaint that complies with the Commission's rules.

### **Schedule for this Proceeding**

The schedule for this proceeding is set forth below. All filings must comply with the Commission's rules and with this Notice.<sup>4</sup>

1) By July 31, 2019, Florida Power must file and serve an answer to the complaint that complies with 47 CFR § 1.726. Any interrogatories posed by Florida Power must be filed and served concurrently with the answer. 47 CFR §1.730(a).<sup>5</sup>

2) By August 12, 2019, AT&T must file and serve a reply to the answer that complies with 47 CFR § 1.728. Any second request for interrogatories posed by AT&T must be filed and served concurrently with its reply. 47 CFR § 1.730(a).

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<sup>2</sup> *See also Amendment of Procedural Rules Governing Formal Complaint Proceedings Delegated to the Enforcement Bureau*, Report and Order, 33 FCC Rcd 7178 (2018) (*Rule Consolidation Order*); *Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to Be Followed when Formal Complaints Are Filed Against Common Carriers*, Report and Order, 12 FCC Rcd 22497 (1997) (*Formal Complaints Order*), Order on Reconsideration, 16 FCC Rcd 5681 (2001) (*Formal Complaints Recon Order*); *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure Relating to the Filing of Formal Complaints Under Section 208 of the Communications Act and Pole Attachment Complaints Under Section 224 of the Communications Act*, Order, 29 FCC Rcd 14078 (2014) (*Formal Complaints Amendment Order*). The rules governing this proceeding differ significantly from the Federal Rules of Civil Procedure. For example, the Commission requires parties to file fact-based pleadings. *See Formal Complaints Order*, 12 FCC Rcd at 54, para. 120, 47 CFR §§ 1.721(b)-(d), (r), 1.726(b). Further, complaint proceedings "are generally resolved on a written record consisting of a complaint, answer, reply, and joint statement of stipulated facts, disputed facts and key legal issues, along with all associated evidence in the record." 47 CFR § 1.721.

<sup>3</sup> The correct formal complaint intake form may be found at <https://transition.fcc.gov/Forms/Form485/485.pdf>.

<sup>4</sup> Staff has authority under sections 0.111 and 0.311 of the Commission's rules, 47 CFR §§ 0.111, 0.311, to modify the filing deadlines and other requirements contained in the formal complaint rules as the circumstances of individual cases warrant and to the extent consistent with section 1.740 of the rules, 47 CFR § 1.740. In addition, if a filing contains a citation to material that appears on the Internet, the filing must attach a hard copy of that material. *See* 47 CFR §1.721(g), (k).

<sup>5</sup> Although motions to dismiss are permitted, they should be filed only in rare circumstances. 47 CFR § 1.729(d); *Rule Consolidation Order*, 33 FCC Rcd at 7182-83, paras. 13-14 ("[M]otions to dismiss are rarely warranted. The formal complaint rules "are designed so that a defendant's answer is a comprehensive pleading containing complete factual and legal analysis, including a thorough explanation of every ground for dismissing or denying the complaint." (quoting *Formal Complaints Recon Order*, 16 FCC Rcd at 5696, para. 34); *Rule Consolidation Order*, 33 FCC Rcd at 7183, para. 14 ("[W]e consider there to be few circumstances justifying the filing of a separate motion to dismiss. . .").

3) A party must file and serve any opposition and objections to the opposing party's interrogatories within seven calendar days after service of the interrogatories. Any interrogatories to which no opposition or objection is raised must be answered within 20 days of service. 47 CFR § 1.730(c).

4) The parties must meet to discuss the resolution or narrowing of as many issues as possible. Such discussions should include the following matters: settlement prospects, discovery, factual and legal issues in dispute, the case schedule, and the preparation of joint statements. *See* 47 CFR § 1.733(b). Based on these discussions, the parties should prepare joint statements of (a) stipulated facts, disputed facts, and key legal issues; and (b) all proposals agreed to and any disputes remaining regarding the matters listed in 47 CFR § 1.733(b)(1). The joint statements must be filed by August 29, 2019. The parties may submit these two joint statements in a single document if each is separately identified therein. **We strongly encourage the parties to devote substantial effort to developing comprehensive and detailed joint statements.** *See Formal Complaints Recon Order*, 16 FCC Rcd at 5696-97, para. 35.

5) An initial status conference in this proceeding has been scheduled for September 12, 2019 at 9:00am, at the Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. *See* 47 CFR § 1.733. We strongly encourage each party to include in the conference a client representative with knowledge of the central facts and authority to settle the dispute. After clearing security at the 12<sup>th</sup> Street entrance, the parties should call Lia Royle at 418-7391 to be escorted to the conference. *See* 47 CFR § 1.733. The parties should be prepared to spend at least three hours in conference.

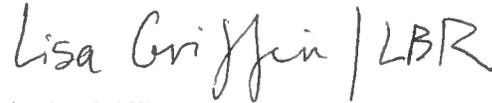
6) The above schedule anticipates final action on the Complaint within 270 days of its filing. *See Rule Consolidation Order*, 33 FCC Rcd at 7186, paras. 22-23. The Enforcement Bureau has discretion to pause the 270-day review period where actions outside the Commission's control (such as settlement discussions or mediation) delay Commission review of the complaint or where the Bureau determines that the issues and record are particularly complex, necessitating additional time for discovery, briefing or the submission of information requested by the Bureau. *See Rule Consolidation Order*, 33 FCC Rcd at 7186, para. 23. In light of the 270-day review period, we will be disinclined to grant requests for deadline extensions, absent a showing of good cause. Further, tight deadlines will apply to any discovery and briefing that may be permitted in this matter, and discovery and briefing must be completed by **October 8, 2019**. The parties and their counsel should plan their schedules accordingly.

The parties must file a public version of all written submissions in this proceeding using the Commission's Electronic Comment Filing System (ECFS). All written submissions should (a) prominently contain the Proceeding Number and Bureau ID Number referenced above, and (b) be addressed to the Commission Secretary. A party that seeks to file both a public version and a confidential version of a submission must do so in compliance with section 1.731 of the Commission's rules and must file the public (redacted) version on ECFS and file the confidential (unredacted) version in hard copy form with the Office of the Commission Secretary. 47 CFR § 1.731. A party asserting confidentiality for any information or materials should restrict its designations to encompass only the specific information that it asserts is confidential. Confidential designations in pleadings must be clearly identified and marked accordingly, e.g., [Begin Confidential]/[End Confidential]. Confidential filings also must clearly identify and mark each page, or portion thereof, which includes confidential designations. *See* 47 CFR § 1.731(a)(1). In addition to filing the unredacted version with the Office of the Secretary, please leave at that office three additional unredacted hard copies marked as "Courtesy Staff Copies. EB-MDRD, 202-418-7330." *See* 47 U.S.C. § 154(i); 47 CFR § 1.734(e). The parties must serve all filings via e-mail, hand-delivery, or overnight delivery, together with proof of service. *See* 47 CFR § 1.734(f). Also, please email to Commission counsel for this proceeding courtesy copies of all filings (both public versions and confidential versions) in a format that permits full text searching, if possible. *See* 47 U.S.C. § 154(i); 47 CFR § 1.734(e). *See Formal Complaints Amendment Order*, 29 FCC Rcd at 14081, para. 11 (requiring parties to provide hard copies of submissions to Commission staff upon request).

This proceeding is restricted for *ex parte* purposes. See 47 CFR Part 1, Subpart H. Further, the parties are required to retain all records that may be relevant to the complaint, including electronic records, until the Commission's decision in this proceeding is final and no longer subject to judicial review. See 47 U.S.C. §§ 154(i), 208(a); 47 CFR § 42.7.

We issue this letter ruling under sections 4(i), 4(j), 208, and 224 of the Act, 47 U.S.C. §§ 154(i), 154(j), 208, 224, sections 1.3, 1.720-1.740, and 1.1401-1.1415 of the Commission's Rules, 47 CFR §§ 1.3, 1.720-1.740, 1.1401-1.1415, and the authority delegated in sections 0.111 and 0.311 of the Commission's rules, 47 CFR §§ 0.111, 0.311.

FEDERAL COMMUNICATIONS COMMISSION

Handwritten signature of Lisa B. Griffin in black ink, with the initials 'LBR' written to the right of the signature.

Lisa B. Griffin  
Deputy Chief, Market Disputes Resolution Division  
Enforcement Bureau  
Federal Communications Commission